

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

ALBERT D. POWELL, JR.
Respondent

Case No.: I-00-20428

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985 (D.C. Official Code §§ 2-1801.01 *et seq.*) and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. I-00-20428) served November 20, 2001, the Government charged Respondent Albert D. Powell, Jr. with a violation of 21 DCMR 707.3 for allegedly failing to provide sufficient waste storage between collections.¹ The Notice of Infraction alleged that the violation occurred on November 19, 2001 at 55 Forrester Street, SW, and sought a fine of \$1,000.

¹ 21 DCMR 707.3 provides: “If containers are used for the storage of rubbish, or a combination [of] rubbish and food waste (garbage), a sufficient number shall be provided to store such solid wastes which may accumulate on the premises during the usual interval between collections.”

Respondent entered a timely plea of Deny pursuant to D.C. Official Code § 2-1802.02(a)(3), and an evidentiary hearing was held on January 25, 2002. Anthony Cuff, the charging inspector, appeared on behalf of the Government. Respondent appeared *pro se*, along with his wife, Tanya Powell, Jr., who served as a witness for Respondent. At the hearing, Respondent sought leave to amend his plea from Deny to a plea of Admit with Explanation pursuant to D.C. Official Code § 2-1802.02(a)(2), which I granted.² Respondent also requested a reduction or suspension in the fine sought by the Government. In light of Respondent's demonstrated efforts to maintain his property after the date of the alleged violation, the Government did not object to a reduction in the fine.

Based upon the testimony of the witnesses and my evaluation of their credibility, and the documentary evidence submitted, I now make the following findings of fact and conclusions of law:

II. Findings of Fact

1. At all relevant times Respondent owned a rental property at 55 Forrester St. SW ("Forrester Site").
2. Prior to November 19, 2001, Respondent had employed a local contractor to remove waste from the Forrester Site three times a month. That local contractor

² Respondent offered several exhibits in support of his explanation and request for a reduction or suspension of the fine sought, which were admitted. *See* Respondent's Exhibits ("RX") RX 200-205.

stopped removing waste at the Forrester Site sometime in October, 2001 without notice to Respondent.

3. Respondent, who resides in Maryland, visits the Forrester Site once every seven to ten days.
4. By his plea of Admit with Explanation, Respondent admits violating 21 DCMR 707.3 on November 19, 2001 at the Forrester Site.
5. On November 19, 2001, Respondent failed to provide sufficient waste storage between collections at the Forrester Site.³
6. On November 20, 2001, Respondent and his father-in-law removed all accumulated waste from the Forrester Site, and added three additional waste containers to the three already there.
7. As of December 27, 2001, Respondent hired a new independent contractor to remove waste from the Forrester Site on a weekly basis.
8. Respondent has accepted responsibility for his unlawful conduct.
9. There is no evidence in the record of a history of non-compliance on the part of Respondent.
10. In light of Respondent's efforts to correct the admitted violation and maintain the Forrester Site, *see* RX 200-203, the Government does not oppose a reduction of the authorized fine.

³ Respondent's plea obviates the need for this administrative court to decide the propriety of the Government issuing a Notice of Infraction within 13 days of Respondent's receipt of a related Notice to Abate Harborage which, by its terms, permitted Respondent a 14-day "grace period" in which to abate the offending condition.

III. Conclusions of Law

1. Respondent violated 21 DCMR 700.3 on November 19, 2001. A fine of \$1000 is authorized for a charged first offense of this violation. 16 DCMR §§ 3201.1(a)(1), 3216.1(f).
2. Respondent has requested a reduction or suspension in the authorized fine. Given the infrequency of waste removal contracted for by Respondent for the Forrester Site prior to December 27, 2001, as well as the infrequency of Respondent's personal visits, a violation of § 707.3 as occurred here was largely inevitable. In light of Respondent's acceptance of responsibility for his unlawful conduct, his demonstrated efforts to correct the cited violation and maintain the site on a more frequent basis, and the absence in the record of any evidence of prior non-compliance, however, I conclude that a reduction, although not a suspension, of the fine is appropriate under these circumstances. Therefore, the fine will be reduced to \$500. *See* D.C. Official Code §§ 2-1802.02(a)(2), 2-1801.03(b)(6); 18 U.S.C. § 3553; U.S.S.G. § 3E1.1.

IV. Order

Therefore, upon the foregoing findings of fact and conclusions of law, and the entire record of this case, it is, hereby, this ____ day of _____, 2002:

ORDERED, that Respondent shall pay a fine in the total amount of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **1/30/02**

Mark D. Poindexter
Administrative Judge